

DECISION - BOARD OF APPEAL CASE NO. 22-17

APPLICANT

Wall Street Development Corp.

LOCATION OF PROPERTY INVOLVED:

**Off Union Street
Walpole Assessors Map 20, Parcel 119
Zoning District: GR**

APPLICATION:

A Special Permit under Section 11.B. of the Zoning Bylaws to allow the installation of underground utilities, including sewer, water, and electric through a portion of a flood plain located off of Union Street, East Walpole, MA 02032.

On January 24, 2018, the Public Hearing relative to Case No. 22-17 was closed.

On February 7, 2018 a Public meeting was held in the Main Meeting Room of Town Hall for the purpose of rendering a Decision as to granting of the Special Permit requested. The following members were eligible to participate in the voting process on February 7, 2018:

Matthew Zuker, Chairman
Craig Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member

VOTE OF THE BOARD:

A motion was made by Ms. Murphy and seconded by Ms. Coffey to deny the application for a Special Permit under Section 11-B. of the Zoning Bylaws that would allow the installation of underground utilities, including sewer, water, and electric, through a portion of a flood plain located off of Union Street, East Walpole, MA 02032.

The vote was 5-0-0 in favor of the motion to deny the Special Permit (Zuker, Hiltz, Murphy, Coffey, Fitzgerald voting); therefore, the **Special Permit** under Section 11.B. is hereby **denied**.

RECEIVED
18 FEB 21 AM 9:55
TOWN OF WALPOLE
TOWN CLERK

REASONS FOR DECISION

It is the finding of the Board that the Applicant was unable to meet the requirements of Section 11.B. to allow the installation of underground utilities, including sewer, water, and electric ,through a portion of a flood plain located off of Union Street, East Walpole, MA 02032, in the General Residence (GR) Zoning District. The Board finds that the proposed plan of the installation of the underground utilities was not necessary, and that there was a suitable alternate route for the installation of the utilities that would have avoided the flood plain. The Board also found that there was a lack of information submitted with regards to a proposed maintenance plan with oversight to the Town, and lack of financial assurance due to the private ownership of the land. Accordingly, the Board has determined that the Special Permit requested is denied.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

Pursuant to Section 11.B. of the Zoning Bylaw, no earth or other materials may be dumped, filled, excavated, or transferred within the Flood Plain Protection Overlay District unless a special permit is granted by the Board. One criteria for issuance of such a special permit is that the proposed use complies in all respects with the provisions of the underlying zoning district (unless subject to the provisions of Section 9, which are not applicable here). The utilities are proposed solely to serve the applicant's proposed residential project along Burns Avenue. By a separate decision, the Board voted to deny the applicant's request for a special permit for its Burns Avenue project as incompatible with the provisions of the Zoning Bylaw applicable to the General Residence district and other applicable provisions of the Zoning Bylaw. Therefore, the Board finds that the proposed use of the utilities is not compatible in all respects with the provisions of the Zoning Bylaw applicable to the General Residence district.

In addition, pursuant to Section 11.B.4 of the Zoning Bylaw, all structures (including subsurface structures) must be designed to prevent contamination of floodwaters by chemicals, waste products, and other pollutants. The applicant did not submit sufficient information to the Board with respect to the design of the sewer line, water line, and related improvements and, therefore, the Board finds that the criteria of Section 11.B.4 of the Zoning Bylaw are not met.

Therefore, the application does not satisfy the criteria for issuance of a special permit under Section 11.B of the Zoning Bylaw.

- (b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The installation of the utilities would facilitate the applicant's proposed residential construction on Burns Avenue. As noted above, the Board has voted in a separate decision to deny the applicant's for a special permit for that project for, among other reasons, its adverse affects associated with vehicular traffic. Moreover, the proposed area of the construction and installation of the utilities from Union Street would have adverse affects on vehicular traffic Union Street which the Board finds unnecessary, because the utilities could be constructed such that connections to existing infrastructure could take place along Burns Avenue, which would reduce construction-related traffic impacts in the neighborhood. Thus, the Board finds this criteria is not met.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

There are no residents, employees, customers or visitors associated with proposed installation of underground utilities. However, as noted above, the installation of the facilities is necessary solely to support the applicant's proposed residential project on Burns Avenue, for which the Board voted to deny a separate application for a special permit for the reasons stated in that decision.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

There are no buffer zone requirements associated with this use.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

As noted above, the applicant did not provide sufficient information during the Public Hearing with regards to the design of the sewer and water lines such that the Board could determine whether the emissions of waste or other issues had been adequately addressed such that operation of the utilities would not be dangerous to the immediate neighborhood. In addition, there was no proposed maintenance plan or financial mechanism proposed to assure ongoing maintenance of the utilities in the event of leakage or other failure, since the utilities would be located on a private property that the applicant indicated might be subject to a condominium form of ownership. Consequently, the Board was without sufficient information to find that the operation of the utilities would not be dangerous to the immediate neighborhood. Consequently, the Board finds that this criteria is not met.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or**

other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

As noted above, the proposed area of construction and installation for the utilities on Union Street is unnecessary due to an alternative area for construction and installation being possible on Burns Avenue, which would have less impact on the immediate neighborhood, such as less noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance. Thus, the Board finds that this criteria is not met.

(g) shall not adversely affect the character of the immediate neighborhood; and



As noted above, the installation of the facilities is necessary solely to support the applicant's proposed residential project on Burns Avenue, for which the Board voted to deny a separate application for a special permit for the reasons stated in that decision, including that such project would adversely affect the character of the immediate neighborhood. Therefore, the Board finds that this criteria is not met.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". The proposed installation of underground utilities is not the most appropriate use of the land, and the impacts to the flood plain could be avoided due to alternative areas that could be used for the installation of the proposed utilities. Therefore the installation of underground utilities is not consistent with the purpose of the Bylaw. and this condition is not satisfied.

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk 

RF/am

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on February 7, 2018 and filed with the Town Clerk on February 21, 2018.